

The opinion in support of the decision being entered today was **not** written  
for publication and is **not** binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DANIEL L. POOLE and ROBERT N. POOLE

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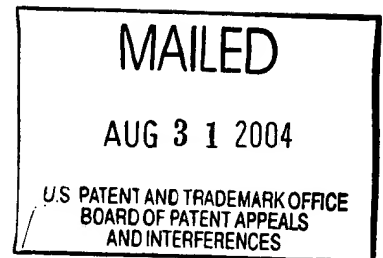
Appeal No. 2004-1245  
Application No. 09/911,242

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HEARD: August 18, 2004

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Before ABRAMS, NASE, and BAHR, Administrative Patent Judges.  
ABRAMS, Administrative Patent Judge.



DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 4-10  
and 16-29,<sup>1</sup> which are all of the claims pending in this application.

We AFFIRM.

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<sup>1</sup>Claims 4-10, 16-20 and 28 were amended subsequent to the final rejection to overcome a  
rejection under 35 U.S.C. § 112, second paragraph (see Papers Nos. 12 and 13).

### BACKGROUND

The appellants' invention relates to an adjustable pipe wrench (claims 4-10, 24-27 and 29), an adjustable hand clamp (claims 16-20 and 28), and a method of grasping an object (claims 21-23). An understanding of the invention can be derived from a reading of exemplary claim 4, which has been reproduced below.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Rhyn	218,195	Aug. 5, 1879
Greer	766,145	Jul. 26, 1904
Beesley <u>et al.</u> (Beesley)	2,543,824	Mar. 6, 1951

(1) Claims 4-7, 16, 17 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greer in view of Rhyn.

(2) Claims 8-10, 18-20 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greer in view of Rhyn and Beesley.

(3) Claims 21-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greer in view of Beesley.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 17) for the examiner's reasoning in support of the rejections, and to the

Brief (Paper No. 16) and Reply Brief (Paper No. 18) for the appellants' arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The appellants' invention relates to pipe wrenches and bar clamping mechanisms. An objective is to allow the user to manipulate the inventive devices with one hand. Representative claim 4 sets forth the invention in the following manner:

4. An adjustable pipe wrench, comprising:

a slide bar having a gripping portion,

an upper jaw mounted pivotally to the slide bar and a spring mounted between the upper jaw and the slide bar,

a lower jaw, slidably mounted on the slide bar, said lower jaw having a lower portion extending toward the gripping portion; and

a brake lever, pivotally mounted on a portion of the lower jaw and spring-biased against said lower jaw wherein a portion of the lever extends longitudinally, and substantially the same length toward the gripping portion as the lower portion extends longitudinally toward the gripping portion, and wherein a user may adjust a position of the lower jaw on

the slide bar by actuating said lever and moving said lower jaw relative to said slide bar.

(1)

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being obvious<sup>2</sup> in view of the combined teachings of Greer and Rhyn. In arriving at this conclusion the examiner has found that Greer discloses all of the subject matter recited in Independent claim 4 except for the pivotally mounted upper jaw. However, the examiner is of the view that it would have been obvious to one of ordinary skill in the art to replace the fixed upper jaw of Greer with a pivotally attached upper jaw, in view of the teachings of Rhyn, in order to allow the wrench to be clamped onto a pipe. The appellants set forth several arguments in rebuttal to this position, which we shall discuss below.

Using the language of claim 4 as a guide, Greer discloses an adjustable wrench comprising a slide bar 1 which comprises a pair of spaced parallel shanks terminating at one end in a gripping portion 3, an upper jaw 2 mounted on the other end of the slide

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<sup>2</sup>The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

bar, a lower jaw 5 slidably mounted on the slide bar, and a brake lever 6-7 pivotally mounted on a portion of the lower jaw (at openings 80) and spring-biased by spring 9 against the lower jaw. A portion 11 of the brake lever extends longitudinally toward the gripping portion, and the length of this portion is "substantially" the same as that of "the lower portion" of the lower jaw which extends longitudinally toward the gripping portion, that is, the unnumbered roughened lowermost longitudinal surface of the lower jaw which is located immediately to the right of the numeral 9, as best shown in Figure 2. In this regard, we point out that the language of claim 4 does not require that the length of the brake lever be substantially the same as the entire length of that portion of the lower jaw to which the brake lever is attached, but that it be substantially the same length as "the lower portion" (emphasis added) of the lower jaw, which clearly reads on that portion of the Greer lower jaw described in the preceding sentence. It should be noted that the phrase "the lower portion" has no antecedent basis in the claim which would limit it to an interpretation other than the plain meaning of the words. Finally, as required by the last passage of claim 4, a user may adjust a position of the lower jaw on the side bar by actuating the brake lever and moving the lower jaw relative to the slide bar.

Greer fails to disclose or teach that the upper jaw is pivotally mounted to the slide bar and that a spring is mounted between the upper jaw and the slide bar.

Rhyn discloses a pipe wrench comprising an upper jaw **A** pivotally attached to a bar **D** along with a longitudinally adjustable lower jaw **I**. A spring **b** is mounted between the bar and the upper jaw to bias the upper jaw toward the lower jaw (column 1). Considering that skill is presumed on the part of the artisan, rather than the lack thereof,<sup>3</sup> we agree with the examiner that it would have been obvious to one of ordinary skill in the art to modify the Greer wrench by replacing the fixed upper jaw with a pivotal one, so as to allow the wrench to engage a pipe, which is evidenced by Rhyn to be known in the art as an alternate conventional use for an adjustable wrench.

It therefore is our conclusion that the combined teachings of Greer and Rhyn establish a prima facie case of obviousness with respect to the subject matter recited in independent claim 4, and we will sustain this rejection. In view of the fact that the appellants have chosen to group independent claims 16 and 29 and dependent claims 5, 7 and 17 with claim 4, the like rejection of these claims also is sustained.

As for claim 6, which adds to claim 4 the limitation that the lower jaw have a thumb-resting portion, we point out that this is present in Greer in the form of the roughened portion of the lower jaw which is unnumbered in Figure 2 but appears to the right of the numeral 9. The rejection of claim 6 is sustained.

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<sup>3</sup>In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

While we have carefully considered all of the appellants' arguments regarding claims 4-7, 16, 17 and 29, they have not convinced us that the decision of the examiner is in error. In particular, the fact that Greer shows a slide bar comprising a pair of spaced parallel rods and refers to the upper jaw as being rigid does not, in our view, provide a basis for concluding that the references cannot be combined or that there is insufficient motivation to do so. It is clear from Rhyn that wrenches having pivotable upper jaws were well known in the art at the time of the appellants' invention for the purpose of gripping pipes, and in the absence of evidence to the contrary we are not persuaded that the artisan would have been deterred from making the proposed modification to Greer by the statements in Greer to which the appellants have referred. Nor are we persuaded by the appellant's assertion that replacing the fixed jaw disclosed by Greer would "change the principle of operation" of the Greer wrench, as argued on page 8 of the Brief, for from our perspective it would merely change the type of article upon which the wrench can be utilized. The reasoning behind our agreement with the examiner regarding the length of the brake lever and the lower portion of the lower jaw was explained above.

(2)

Claims 8-10, 18-20 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greer in view of Rhyn and Beesley, the latter being cited for its

teaching of providing a ratcheting mechanism on the slide bar of an adjustable wrench, including teeth on a surface of the brake member and the slide lever. It is the examiner's position that it would have been obvious to add this feature to the modified Greer wrench. The only argument offered by the appellants in response is that Beesley fails to overcome the deficiencies in the combination of Greer and Rhyn, and thus no opposition to the examiner's position regarding the addition of Beesley to the combination has been voiced. As explained above, we found no deficiencies in the combination of Greer and Rhyn, and therefore we shall sustain the rejection of claim 8 and of claims 9, 10 and 18-20, which the appellants have grouped with claim 8.

Claim 28 adds to claim 16 the requirement that the lower jaw is subject to motion toward the upper jaw when the brake lever is engaged and to motion to and from the upper jaw when the lever is disengaged. Independent claim 16 was grouped with claim 4, and its rejection on the basis of Greer and Rhyn was sustained along with claim 4. While the appellants have argued that the combined teachings of Greer, Rhyn and Beesley fail to disclose or teach the features recited in claim 28, they have not explained why they believe this to be the case. The fact is that Greer specifically explains in the sentence bridging pages 1 and 2 that the lower jaw is allowed to move toward the upper jaw when the brake is engaged and can move to and from the upper jaw when the brake is disengaged. The rejection of claim 28 is sustained.



(3)

Independent claims 21 and 24, and dependent claims 22, 23 and 25-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greer in view of Beesley. Claim 21 is directed to a method of grasping a object with one hand using an adjustable hand tool having a brake lever, which method comprises the steps of gripping the hand tool with one hand, adjusting the gap between the jaws of an adjustable hand tool that is described in virtually the same manner as in claim 4, and then grasping the object with the tool.

We agree with the examiner, on the basis of the same reasoning as we applied in sustaining the rejection of claim 4, that Greer discloses all of the subject matter recited in claim 21 except for the pivotable upper jaw. As was the case with Rhyn, Beesley discloses a wrench having a movable lower jaw and an upper jaw that is pivotable with respect to the gripping portion of the wrench. For the same reasons as were set forth above in modifying Greer in view of Rhyn, we also will affirm the examiner's position with regard to modifying Greer in view of Beesley, that is, that it would have been obvious to replace the fixed upper jaw with a pivotable upper jaw. The appellants admit that Greer is capable of one-hand operation but argue that it lacks the required relationship between the length of the brake lever and "the lower portion" of the lower jaw (Brief, page 13), and that this deficiency is not cured by

Beesley. We reiterate here our conclusion - explained above - that this is not a shortcoming of Greer, and therefore the appellants' argument again is not persuasive. The rejection of claim 21 and claims 22 and 23, which were grouped therewith, is sustained.

The appellants advance the same arguments against the like rejection of independent apparatus claim 24, which recites the components of the wrench in the same manner as claims 4 and 21. On the basis of the reasoning expressed with regard to our decision to sustain the rejections of those claims, we also will sustain the rejection of claim 24 and dependent claims 25 and 26, which have been grouped with claim 24.

CONCLUSION

All three of the examiner's rejections are sustained.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

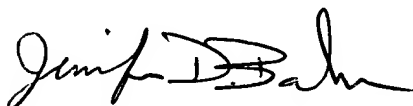
AFFIRMED



NEAL E. ABRAMS  
Administrative Patent Judge



JEFFREY V. NASE  
Administrative Patent Judge



JENNIFER D. BAHR  
Administrative Patent Judge

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